

1

2

3
4
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5

6 JOANN MOUTON,

7

Plaintiff,

No. C 13-4121 EDL (PR)

8

v.

**ORDER DISMISSING WITH
LEAVE TO AMEND**

9

VILLAGRAN, et. al.,

10

Defendants.

11

12 Plaintiff, a state prisoner currently incarcerated at Central California Women's
13 Facility, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff then filed
14 an amended complaint (Docket No. 7) that the court will review. She has been granted
15 leave to proceed in forma pauperis.

16

DISCUSSION

17

A. Standard of Review

18

Federal courts must engage in a preliminary screening of cases in which prisoners
seek redress from a governmental entity or officer or employee of a governmental entity.
28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may
be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at
1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police*
Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

25

26

27

28

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of
the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;
the statement need only ""give the defendant fair notice of what the . . . claim is and the
grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations

1 omitted). Although in order to state a claim a complaint "does not need detailed factual
2 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
5 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
6 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
7 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
8 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
9 framework of a complaint, they must be supported by factual allegations. When there are
10 well-pleaded factual allegations, a court should assume their veracity and then determine
11 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
12 679 (2009).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
14 elements: (1) that a right secured by the Constitution or laws of the United States was
15 violated, and (2) that the alleged deprivation was committed by a person acting under the
16 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

17 **B. Legal Claims**

18 Plaintiff states that jail officials were negligent and provided inadequate medical
19 care.

20 Plaintiff is informed that deliberate indifference to serious medical needs violates the
21 Eighth Amendment's proscription against cruel and unusual punishment. *Estelle v.*
22 *Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992),
23 overruled on other grounds, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th
24 Cir. 1997) (en banc). A determination of "deliberate indifference" involves an examination
25 of two elements: the seriousness of the prisoner's medical need and the nature of the
26 defendant's response to that need. *Id.* at 1059.

27 A "serious" medical need exists if the failure to treat a prisoner's condition could
28

1 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* The
2 existence of an injury that a reasonable doctor or patient would find important and worthy of
3 comment or treatment; the presence of a medical condition that significantly affects an
4 individual's daily activities; or the existence of chronic and substantial pain are examples of
5 indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059-60.

6 A prison official is deliberately indifferent if he or she knows that a prisoner faces a
7 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
8 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only
9 "be aware of facts from which the inference could be drawn that a substantial risk of serious
10 harm exists," but he "must also draw the inference." *Id.* If a prison official should have
11 been aware of the risk, but was not, then the official has not violated the Eighth
12 Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175,
13 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and prison
14 medical authorities regarding treatment does not give rise to a § 1983 claim." *Franklin v.*
15 *Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). In addition "mere delay of surgery, without
16 more, is insufficient to state a claim of deliberate medical indifference.... [Prisoner] would
17 have no claim for deliberate medical indifference unless the denial was harmful." *Shapely*
18 *v. Nevada Bd. Of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985).¹

19 Plaintiff provides very few details in her complaint. She states that several
20 defendants were negligent as they were not in sight at a specific time as people were
21 exiting a bus and then a sheriff's deputy snatched her off the ground injuring her back and

22
23 ¹ It is not clear if plaintiff was a pre-trial detainee at the time of this incident. Regardless,
24 even though pretrial detainees' claims arise under the Due Process Clause, the Eighth
25 Amendment serves as a benchmark for evaluating those claims. See *Carnell v. Grimm*, 74
26 F.3d 977, 979 (9th Cir. 1996) (8th Amendment guarantees provide minimum standard of care
27 for pretrial detainees). The Ninth Circuit has determined that the appropriate standard for
28 evaluating constitutional claims brought by pretrial detainees is the same one used to evaluate
convicted prisoners' claims under the Eighth Amendment. "The requirement of conduct that
amounts to 'deliberate indifference' provides an appropriate balance of the pretrial detainees'
right to not be punished with the deference given to prison officials to manage the prisons."
Redman v. County of San Diego, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc) (citation
omitted).

1 tooth. The court is not sure if this an excessive force claim or if it involves an unsafe living
2 condition and plaintiff was injured exiting the bus. Plaintiff was then taken to a nurse who
3 did not check on plaintiff until after the nurse's lunch break. Plaintiff provides no other
4 information especially regarding how failure of the nurse to treat her caused an injury.
5 Plaintiff's allegations are insufficient to state a claim. The complaint will be dismissed with
6 leave to amend. Plaintiff must provide additional information regarding her claims and how
7 the defendants' actions violated her constitutional rights.

8 **CONCLUSION**

9 1. The complaint is **DISMISSED** with leave to amend in accordance with the
10 standards set forth above. The amended complaint must be filed within **twenty-eight (28)**
11 **days** of the date this order is filed and must include the caption and civil case number used
12 in this order and the words AMENDED COMPLAINT on the first page. Because an
13 amended complaint completely replaces the original complaint, plaintiff must include in it all
14 the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
15 1992). She may not incorporate material from the original complaint by reference. Failure
16 to amend within the designated time will result in the dismissal of this action.

17 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
18 court informed of any change of address by filing a separate paper with the clerk headed
19 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
20 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
21 Federal Rule of Civil Procedure 41(b).

22 **IT IS SO ORDERED.**

23 Dated: November 14, 2013.


24 ELIZABETH D. LAPORTE
United States Chief Magistrate Judge

25 G:\PRO-SE\EDL\CR.13\Mouton4121.dwlta.wpd

26
27 UNITED STATES DISTRICT COURT
28

1 FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA

3 JOANN MOUTON,
4 Plaintiff,
5 v.
6 VILLAGRAN et al,
7 Defendant.

Case Number: CV13-04121 EDL

CERTIFICATE OF SERVICE

8
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
Court, Northern District of California.

10 That on November 15, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
11 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
12 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.

13
14 Joann Mouton WE6671
15 CCWF
16 516-11-3 Low
P.O. Box 1508
17 Chowchilla, CA 93610-1508

18 Dated: November 15, 2013

19 Richard W. Wiking, Clerk
By: Lisa R Clark, Deputy Clerk